

FILED

## UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

WESTERN DIVISION

**ESTATE OF JOSE R. FELICIANO,** )  
 By and through Jose L. Feliciano and )  
 Migdalia Rosado, as Administrators of )  
 The Estate of Jose R Feliciano, )  
 Plaintiff )  
 vs. )  
 KEVIN A. MILES, )  
 LEROY HOLDING COMPANY, INC., )  
 and SLC TRANSPORTS, INC., )  
 Defendants )

Civil No. 03-30.308-MAP

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION IN LIMINE**  
**REGARDING PHOTOGRAPH NUMBER 99**

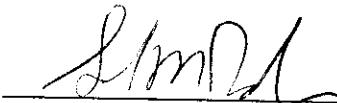
The Plaintiffs hereby oppose the Defendants' Motion in Limine seeking to preclude entry into evidence photograph number 99 which depicts the State of New York Commercial Driver's Manual. In response the Plaintiffs state the following:

The defendants' motion references a photograph; however, the plaintiffs do not intend to introduce a photograph of the State of New York Commercial Driver's Manual. Instead, an original manual will be introduced. The references to a numbered photograph in the defense motion actually is a reference to a proposed exhibit number sent to the defendants by the plaintiffs in connection with drafting the pre-trial memorandum in this case. The exhibits were copied or scanned and sent to the defendants on a compact disc for review. The actual manual will be offered at trial.

With respect to the defendants' allegation that the manual is hearsay, the manual is admissible pursuant to Johnson v. William C. Ellis & Sons Iron Works, Inc., 609 F.2d 820 (5th Cir.1980), there the court found statements in industry safety codes and a government safety bulletin promulgated by the Department of Labor admissible in a products liability action under FRE 803(18), the Federal hearsay exception for learned treatises.

WHEREFORE, the plaintiffs hereby request this Honorable Court to deny the defendants' Motion in Limine Regarding Photograph Number 99.

Respectfully submitted,  
 By the Plaintiff,  
**The Estate of Jose R. Feliciano**



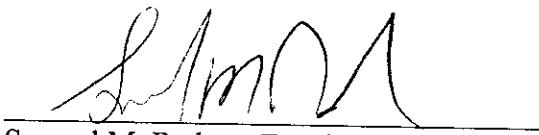
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Plaintiffs Attorneys

Dated: 4/25/05

**CERTIFICATION**

I, Samuel M. Radner, Esquire hereby certify that a copy of the foregoing was mailed postage pre-paid to the following counsel and pro se parties of record on April 25, 2005:

Kevin G. Murphy, Esquire  
Pessalano, Dusel, Murphy & Casartello, P.C.  
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Samuel M. Radner, Esquire